

1 you, as the CEO of Comcast, willing to give
2 the NFL broader distribution if they lower the
3 price?

4 A Yes.

5 Q The price per subscriber for
6 Versus and Golf, can we say for rough estimate
7 purposes is in the neighborhood of a quarter,
8 25 cents?

9 A I think so.

10 Q If the NFL were willing to reduce
11 its price down to that level, are you willing
12 to give them much broader distribution?

13 A Yes.

14 MR. CARROLL: Your Honor, no
15 further questions.

16 JUDGE SIPPEL: Let me -- I'm going
17 to turn it right over to you, but I just want
18 to be -- broader distribution of what?

19 MR. CARROLL: I'm sorry. Broader
20 distribution of the NFL Network.

21 THE WITNESS: Yes.

22 BY MR. CARROLL:

1 Q You understand the NFL Network has
2 brought this proceeding, and is asking for an
3 order from the FCC directing broader
4 distribution. You understand that.

5 A I do.

6 Q But you understand they're asking
7 that at a much higher price.

8 A Much higher.

9 Q Much higher. And my question for
10 you -- and you understand in this case the NFL
11 has been arguing that they want that because
12 Versus and Golf get much broader distribution.
13 Correct?

14 A Correct.

15 Q But Versus and Golf are 25 cents,
16 and the NFL Network is roughly almost three
17 times. Right?

18 A That's correct, plus Versus and
19 Golf have hundreds of live events, and are
20 year-round live sporting events, not six weeks
21 of sporting events, eight events.

22 Q So, my question is just, if the

1 NFL were to come to you and say look, we'd
2 take the same price as Versus and Golf, will
3 you give us broader distribution, your answer
4 to that would be?

5 A Yes.

6 MR. CARROLL: That's it, Your
7 Honor.

8 JUDGE SIPPEL: All right. Now,
9 just one more clarification. When you say
10 it's distribution of the NFL Network, is that
11 with or without the eight-game package?

12 THE WITNESS: With the eight-game
13 package. If the price -- this has always, to
14 my mind, been about what price for how much
15 content, and how many live events, and whether
16 that price is fair for our customers through
17 us purchasing the -

18 JUDGE SIPPEL: I understand that.
19 I just want to know what -

20 THE WITNESS: What if -

21 JUDGE SIPPEL: Yes, who's on first
22 here. It's going to be NFLN plus the eight

1 games, or with the eight games, I should say.

2 And what about surcharge?

3 THE WITNESS: That would be
4 inclusive. The eight games was for the
5 surcharge, so I think that would be -- if
6 you're including the games, you'd be inclusive
7 of the surcharge.

8 JUDGE SIPPEL: We're talking about
9 25 cents, plus a surcharge.

10 THE WITNESS: No.

11 MR. CARROLL: No, it's inclusive
12 of the surcharge.

13 THE WITNESS: Inclusive of the
14 surcharge. We used to pay -

15 JUDGE SIPPEL: Inclusive or
16 exclusive?

17 THE WITNESS: Inclusive.

18 JUDGE SIPPEL: That means you've
19 got to include the surcharge.

20 THE WITNESS: So, the surcharge --
21 we used to pay, I think, [REDACTED] for the
22 NFL Network or less when we carried it without

1 games. The NFL Network with no games is sort
2 of a talking head show, and reruns of classic
3 games, or whatever, classic clips. That
4 channel is -- not too many people carry that
5 channel.

6 JUDGE SIPPEL: I just don't want
7 to go down that road with you, because we've
8 had a lot of testimony on that.

9 THE WITNESS: All right.

10 JUDGE SIPPEL: So, I have a feel
11 for what that is without the games. But with
12 the games -- but the question, there was
13 always -- there was a lot of evidence in here,
14 or talk about surcharge. And it was -- one
15 number was two and a half billion dollars. Am
16 I right?

17 MR. CARROLL: Yes. Let me ask a
18 few questions, see if I can help that.

19 BY MR. CARROLL:

20 Q The current price that the NFL
21 Network is charging is in the [REDACTED] range?

22 A Inclusive of the games.

1 Q So, that means that the NFL
2 Network now with games, regular price and
3 surcharge added together gets you into the [REDACTED]
4 [REDACTED] range. Is that right?

5 A You know, you -- I don't know -

6 MR. PHILLIPS: Your Honor, I sort
7 of belatedly have to say this.

8 JUDGE SIPPEL: Yes?

9 MR. PHILLIPS: I did try to give -

10 JUDGE SIPPEL: Is this an
11 objection, because -- -

12 MR. PHILLIPS: It is an objection,
13 Your Honor.

14 JUDGE SIPPEL: Is this an
15 objection, because speeches and testimony -

16 MR. PHILLIPS: I'm sorry, Your
17 Honor. It's an objection.

18 JUDGE SIPPEL: What's the
19 objection?

20 MR. PHILLIPS: I gave Comcast fair
21 warning before I went into price terms of
22 their's, and I was discreet about it, as you

1 know, Your Honor. And I'm not getting the
2 same courtesy here.

3 MR. CARROLL: Your Honor, that
4 price fact has been out there since opening
5 arguments.

6 MR. PHILLIPS: I don't think so.

7 MR. CARROLL: It is.

8 MR. PHILLIPS: Let's go ahead.
9 It's out there now, Your Honor.

10 JUDGE SIPPEL: Well, I don't have
11 to take a position that. I just want to hear
12 from the witness what's going on.

13 MR. CARROLL: Right. I'm trying
14 to ask the questions just to help that. I
15 think to help clarify this issue, that the [REDACTED]
16 [REDACTED] current price, that's inclusive of
17 the surcharge. You don't add the surcharge on
18 top of that. That already has the surcharge
19 in it. Right?

20 THE WITNESS: Whatever that number
21 is, whatever number I said, whether it's [REDACTED]
22 or different, would be inclusive of the

1 surcharge.

2 JUDGE SIPPEL: Okay.

3 BY MR. CARROLL:

4 Q The 25 cents that you were saying
5 would be comparable to Versus and Golf, you're
6 saying that's an all-in price for everything,
7 no surcharge on top of it.

8 A Because Versus and Golf, let's
9 talk about them, you have every NHL hockey
10 game that's on Versus, the Stanley Cup
11 Playoffs, the championship on Tiger Woods.

12 JUDGE SIPPEL: That's all right.

13 THE WITNESS: All of that is
14 inclusive -

15 JUDGE SIPPEL: I don't need that.

16 THE WITNESS: -- in their price.

17 JUDGE SIPPEL: I don't need that.

18 Let me -

19 MR. CARROLL: There's no surcharge
20 added.

21 JUDGE SIPPEL: All right. Now, so
22 it's [REDACTED] -- right now, as we sit here

1 today, it's [REDACTED] or thereabouts.

2 THE WITNESS: Well, I don't want
3 to comment -- can I clarify, if I might, that
4 what that number is today, that's -

5 (Simultaneous speech.)

6 THE WITNESS: Exactly.

7 JUDGE SIPPEL: Okay. All right.

8 Let's work with the number [REDACTED] [REDACTED]
9 [REDACTED] would be at the sport tier. Is that
10 correct? And the 25 cents would be down at
11 the D2.

12 MR. CARROLL: Yes.

13 JUDGE SIPPEL: But, in either
14 case, the surcharge is built in.

15 MR. CARROLL: Exactly.

16 JUDGE SIPPEL: Okay. See how easy
17 it is?

18 MR. CARROLL: All right.

19 JUDGE SIPPEL: Mr. Phillips, I'm
20 sorry, but that's the way -

21 MR. PHILLIPS: You took some of my
22 questions from me, Your Honor, but I'm always

1 happy for you to do that. Let me try to -

2 JUDGE SIPPEL: You say that, I put
3 my hand on my wallet.

4 (Laughter.)

5 MR. PHILLIPS: You know, I always
6 tell Mr. Carroll that line, Your Honor. Let
7 me just make sure I understand completely.

8 Good afternoon, Mr. Roberts. You
9 and I have met before.

10 THE WITNESS: Yes, we have.

11 MR. PHILLIPS: And I'm going to
12 ask you a few more questions.

13 CROSS EXAMINATION

14 BY MR. PHILLIPS:

15 Q Now, the surcharge -- the price
16 that you're saying that you would accept right
17 now from the NFL is 25 cents for the NFL
18 channel, including the eight live football
19 teams. Correct?

20 A That was the question Mr. Carroll
21 asked, yes.

22 Q And that's what you answered.

1 Correct?

2 A Yes.

3 Q And, as I understand it, the way
4 you get there is that's the same price that
5 Versus and Golf have for D2 -- actually, in
6 Versus and Golf cases for analog distribution,
7 but you're saying for the NFL Network, 25
8 cents comparable to Versus and Golf on your
9 broad digital level. Correct?

10 A Correct.

11 Q And that's all included, eight
12 games, everything. Right?

13 A Yes.

14 Q Now, Versus and Golf are around 25
15 cents in January 2006, weren't they?

16 A I think they're probably lower in
17 January 2006.

18 Q Twenty to twenty-five cents. Is
19 that correct?

20 A Generally speaking, might have
21 been the teens.

22 Q And in January 2006, you told the

1 NFL that if you could get the eight-game
2 package to put on Versus you'd pay them value,
3 the equivalent of about two to two and a half
4 billion dollars. Is that correct, sir?

5 A Inclusive of the equity if the
6 channel became valuable.

7 Q And that was -- and that would
8 have raised the price of Versus from wherever
9 it was at the time, the 20 to 25 cents, if you
10 put those games on there. Correct, sir?

11 A We were -- the plan was to
12 transform Versus.

13 Q Sir, I'm sorry. Would it have
14 raised the price of Versus if you put those
15 games on the network?

16 A The plan was to transform Versus
17 inclusive of the NFL games, and, hopefully,
18 Major League Baseball. In fact, the NHL had
19 just come on, so there was a increase in --
20 would have been an increase in price had we
21 been successful in creating a multi-sport
22 network.

1 Q Mr. Roberts, I'd like an answer to
2 just my question. If you had added the eight
3 games to Versus at the time, you would have
4 increased the price. Is that a fair
5 statement?

6 A Would have had some -- we would
7 have tried to procure more content, so it's a
8 theoretical question, I think. That was
9 always the conversations. I'm not trying to be
10 argumentative.

11 Q Mr. Roberts, can you answer the
12 question? Can you answer the question of
13 whether or not, if you added the eight games
14 at two and a half billion dollars to Versus,
15 you would have had to raise the price of
16 Versus. Can you answer that?

17 MR. CARROLL: Your Honor, I think
18 he's explained -- he's answered and explained
19 why.

20 JUDGE SIPPEL: No, no, no. Let
21 him try one more time. Can you answer the
22 question?

1 THE WITNESS: I think we would
2 have -- the plan was to have an increase, but
3 I also just want to say that the idea was not
4 to just have eight games. So I think it's
5 yes, but.

6 JUDGE SIPPEL: Well, would you not
7 have considered the eight games on Versus,
8 even if the price was in your range, unless
9 you had all this other stuff going, too?

10 THE WITNESS: We were -- to go
11 back in time, OLN was the Outdoor Life
12 Network. It had a lot of hunting, and
13 fishing, and shows that were more outdoor in
14 nature. This was a transformation to become
15 a multi-sport network in the vein of ESPN.
16 So, the notion of having six weeks of
17 programming, and eight games, and stopping
18 there was never a consideration. So, it's a
19 theoretical -- but yes, I'm happy to say there
20 would have been an increase if that's where it
21 had ended up.

22 JUDGE SIPPEL: All right.

1 THE WITNESS: But that was never
2 the goal, to end it up there.

3 MR. PHILLIPS: Your Honor, may -

4 JUDGE SIPPEL: Maybe I got your
5 question answered.

6 MR. PHILLIPS: Well, sort of, but
7 I think I can go around it a different way.

8 BY MR. PHILLIPS:

9 Q Mr. Roberts, in connection with
10 that bid for those games for two to two and a
11 half billion dollars, you also told the NFL
12 that you would transform Versus into an all-
13 football network if you could get those games,
14 didn't you?

15 A The NFL said to us that the owners
16 were pondering what the new transformed
17 network should be. We had started with multi-
18 sport, and some of the owners liked that.
19 They then said to us that perhaps it should be
20 all football, and go and procure college
21 football games, and other football-related
22 programming. And in our proposal, yes, we

1 said you can pick between multi-sport and all
2 football, and we would have spent money more
3 in the football-related category, than in
4 multi-sport, but never just stopping at the
5 NFL.

6 Q And the economics of the offer
7 didn't change, even if it was an all-football
8 network. It was still going to be two to two
9 and a half billion dollars. Correct?

10 A For the eight games piece of the
11 story, yes.

12 Q Yes. And, so, you were going to
13 add those eight games, and that cost to Versus
14 at a price of 20 to 25 cents, and you knew you
15 were going to have to charge more money for
16 it, didn't you, sir?

17 A Versus was in the teens. Okay.
18 So we knew, we had about \$250 million a year
19 was the cash payment for the games.
20 Everything else was coming in future value of
21 what the channel could become.

22 Q And, sir, today you think that,

1 therefore, the NFL should accept the price of
2 Versus without the games that you were willing
3 to offer years ago, for a network that, in
4 fact, has the games on it. Is that fair? Is
5 that what you're expecting, sir?

6 A I think the games have kind of
7 gone down in value, because a number of people
8 have not had the games for any price, like
9 Time Warner, and Cablevision, and other MSOs,
10 and their businesses have -- and their
11 customers have enjoyed the games because
12 they're on broadcast television in the home
13 and away market.

14 Q Is it your testimony, Mr. Roberts,
15 that you think NFL games are less popular
16 today than they were three years ago?

17 A The NFL Network games?

18 Q No, the NFL games.

19 A The NFL -- my testimony would be
20 the NFL Network games have -- a number of
21 distributors have not had those games for a
22 number of years. And the businesses seem to

1 be very viable without those games.

2 Q Sir, do you recall in December of
3 `07 on the march to the Super Bowl, there was
4 a game in which -- do you remember the New
5 England Patriots were going for the first
6 undefeated season in 20 something years.

7 Correct?

8 A Yes.

9 Q And, in fact, they were playing
10 their last game of the season against the New
11 York Giants. Correct, sir?

12 A Yes.

13 Q And, in fact, that was going to be
14 shown on the NFL Network alone, wasn't it,
15 sir?

16 A Yes.

17 Q And there was a public outcry that
18 those games should be more broadly distributed
19 because of their popularity, wasn't it, sir?

20 A That's correct.

21 Q In fact, Comcast encouraged that
22 public outcry by saying that you thought that

1 those games should be publicly distributed,
2 sir.

3 A That's correct.

4 Q And, in fact, you've shown the
5 tremendous value of those games, that there
6 was this enormous public outcry at that time.
7 Is that a fair statement?

8 A The NFL chose to put that game on
9 the network, which was their decision to do.
10 So, yes, there was one game that had --

11 because of the uniqueness of an undefeated
12 season, had tremendous national interest,
13 which is somewhat unusual, I think you would
14 agree, that that situation occurs very often.

15 Q Now, the -- you agree that Comcast
16 publicly encouraged the NFL to publicly
17 broadcast that game. Correct?

18 A I think -- I'm not sure that I
19 did. Comcast may have said that if the game
20 was on broadcast television, since it was of
21 national interest, that might be a nice thing
22 to do. But I'm sure we did encourage that it

1 would be on broadcast television.

2 Q And then you turned around and
3 sued the NFL for having followed what you
4 publicly encouraged by putting it on broadcast
5 television. Isn't that correct?

6 A No, I don't know that that's -

7 Q Well, shall I pull out the New
8 York State court complaint, Mr. Roberts? Yo
9 don't recall that you sued the NFL on this?

10 A Is it price matter -

11 Q No, sir. I'm asking whether
12 Comcast sued the NFL for following its advice
13 to publicly air that game.

14 A You want to pull out the
15 complaint, I -

16 Q You don't recall this.

17 A There may be a price dispute,
18 whether we have to pay for a game that was on
19 broadcast television. They chose to put that
20 game on, out of all the games they could have
21 picked, on the NFL Network. And, so, yes,
22 there may have been a dispute over how much to

1 pay that season for the NFL Network, since the
2 game that they picked ended up on broadcast
3 TV.

4 Q Now, I think, Mr. Roberts, as I
5 understand it, you -- there's the story you
6 told. You tried to get Sunday Ticket back in
7 2002, change the subject for a minute. And
8 you tried to get the Sunday Ticket in 2002,
9 because it was being shown by your competitor,
10 DirectTV. Correct?

11 A Yes, I didn't think I mentioned
12 2002, but previously we had tried on numerous
13 occasions to get Sunday Ticket.

14 Q And the NFL didn't give it to you,
15 did it?

16 A No.

17 Q And then in 2004, you've entered
18 into a carriage agreement, part of which the
19 consideration for was a right to negotiate to
20 get Sunday Ticket again. Correct, sir?

21 A Correct.

22 Q And you didn't get that, either.

1 A Correct.

2 Q And, as you say, Mr. Tagliabue,
3 you say, called you up and said don't waste
4 your time.

5 A That's right.

6 Q And DirecTV in carriage of Sunday
7 Ticket was a thorn in your side, because
8 DirecTV was using that to try to steal
9 subscribers. Correct?

10 A Correct.

11 Q Which is the reason that you were
12 trying to get Sunday Ticket. Correct, sir?

13 A Well, I'm doing my job.

14 Q I understand that. And there came
15 a time then -- so you started bidding on the
16 eight-game package. And I think you testified
17 that you traveled down to New York to meet at
18 the NFL some 20 times, sir. And you put a lot
19 of effort into this. Correct, sir? As well
20 as a lot of potential money. You have to --
21 nodding doesn't work. I'm sorry.

22 A Okay. Yes.

1 Q I realize I might be going too
2 fast. It's a bad habit.

3 A Not going too fast.

4 JUDGE SIPPEL: That really doesn't
5 help when you do that, but that's -- go ahead.

6 MR. PHILLIPS: Okay. I'm sorry,
7 Your Honor?

8 JUDGE SIPPEL: One question at a
9 time.

10 MR. PHILLIPS: I'm going to do -

11 JUDGE SIPPEL: And very few
12 speeches.

13 MR. PHILLIPS: I'm sorry, sir.

14 BY MR. PHILLIPS:

15 Q Now, when it didn't look like you
16 were going to get those games, you raised the
17 point with NFL executives that -- you raised
18 tiering to the NFL executives, the tiering of
19 the NFL Network, did you not?

20 A What was the first part of the
21 question?

22 Q When it started to look like you

1 might not get those games -

2 A No, that's not right.

3 Q You raised tiering with the NFL
4 executives. Correct, sir? Reminded them -

5 A The second part is right, but not
6 the -

7 Q You reminded them of Comcast's
8 right to tier.

9 A At the time before they had made
10 any decisions, well before they made any
11 decision. I went to present to the entire
12 broadcast committee at their request our
13 "final proposal", and prior to that, and at
14 that session, presumably, anyway, they told us
15 that no decision had been made. The Committee
16 wanted to meet us. We were the finalist, and
17 then they ultimately were going to go to
18 another meeting in January, which you don't
19 know at the time, but that's ultimately what
20 happened, that they were going to make the
21 decision. It had been going on for a very
22 long period of time, so I had no inclination

1 that we weren't going to get it at the time we
2 raised the tier.

3 Q Had Mr. Tagliabue told you in
4 December that there was a growing consensus
5 that the network was going to get it?

6 A Not at that point.

7 Q You mentioned that there was --
8 you weren't surprised at that final phone
9 call, that you'd gotten some news before then,
10 sir.

11 A As they headed to Florida. My
12 understanding was I think they were in Florida
13 in January, so it was sometime in January that
14 I kind of got a head's up that they were
15 meeting, and there were a number of people
16 maybe -

17 Q And in January, sir, you and other
18 Comcast executives also reminded NFL
19 executives of the tiering right. Correct,
20 sir?

21 A No, that was back in December, I
22 think. But I could be -- my memory was before

1 we went into the final presentation before the
2 Broadcast Committee, which I think was in
3 December, and there were a couple of different
4 meetings. We wanted to make sure that before
5 they had made a decision, that the owners knew
6 of this right.

7 Q And there was a meeting that you
8 had around the middle or towards the end of
9 January, before the final decision was made,
10 with NFL executives. Correct, sir?

11 A I may have the dates wrong. Maybe
12 the final owners meeting, there was one
13 meeting in December. Maybe there was another
14 meeting in January. What's the date of -

15 Q This isn't with the owners. This
16 is Mr. Tagliabue, Mr. Hawkins. Do you recall
17 that meeting?

18 A If you could refresh my memory on
19 what date the phone call that Mr. Tagliabue,
20 the last phone call.

21 Q The phone call is on January 27th,
22 sir.